

## **REMARKS**

The April 17, 2003 office action (paper # 4) and the references cited therein have been carefully considered. In view of the amendments presented herewith, and based on the following remarks, Applicant believes that the instant application is in condition for allowance.

### ***Claim Rejections***

Claims 3-12 and 24-29 are rejected under 35 U.S.C. § 112 as being indefinite. Claims 1-14 are rejected under the doctrine of obviousness-type double patenting. Claims 15-17, 23-26 and 29 are rejected under 35 U.S.C. § 102(b) as being anticipated by Kuramoto et al. In addition, claims 15-17, 20 and 23 are rejected under 35 U.S.C. § 102(b) as being anticipated by Becht. Lastly, claims 18-19 are rejected under 35 U.S.C. § 103(a) as being obvious over Kuramoto et al. Or Becht in view of Hooven.

To address the claim rejections, Applicant has amended the application and responds to each rejection in the sections below.

### ***Claim Rejections - 35 U.S.C. § 112***

The Examiner found that claims 3-12 are indefinite since the term "the linear axis" lacks proper antecedent basis in claim 3. The Examiner also found that claims 24-29 are indefinite since the terms "the blade" and "the longitudinal axis" in claim 24 lack proper antecedent basis. Applicant has amended claims 3 and 24 to effect suitable editorial revisions.

### ***Double Patenting***

The Examiner rejected claims 1-14 under the doctrine of obviousness-type double patenting, finding that claim 1 in the application is not patentably distinct from claim 1 in U.S. Patent No. 6,315,184. Applicant is filing a terminal disclaimer concurrently with this response to overcome the double patenting rejection.

### ***Claim Rejections - 35 U.S.C. § 102***

The Examiner concluded that Kuramoto et al. anticipates the device claimed in claims 15-17, 23-26 and 29. Applicant has amended claim 15 to include "a second rotatable shaft for driving the blade and the staple driver." Support for this amendment may be found on p. 20, lines 5-15, and other sections of the application. Kuramoto et al. does not teach a second rotatable shaft for driving a blade and staple driver. Rather, Kuramoto et al. teaches a blade (38) and staple pusher (33) that are moved by hydraulic fluid pressure when a lever (8) is squeezed. (Col. 7, line 55 - Col. 8, line 4). Neither the hydraulic medium nor the lever (8) can be fairly described as a rotatable shaft that drives the blade and staple pusher. Therefore, claim 15 is not anticipated by Kuramoto et al.

Claims 16, 17 and 23 are dependent on claim 15 and incorporate all the features recited in claim 15. Therefore, claims 16, 17 and 23 are not anticipated by Kuramoto et al. for at least the same reason that amended claim 15 is not anticipated. Dependent claims 16 and 17 are distinguishable for additional reasons as well. Claim 16 has been amended to recite outer threads on the second rotatable shaft for driving the blade and the staple driver. Moreover, claim 17 has been amended to recite that the second rotatable shaft is adapted to drive the staple driver and the blade simultaneously. Support for these amendments may be found on p. 17, lines 5-6, p. 20, lines 11-15, and other sections of the application. Kuramoto et al. does not disclose a shaft with outer threads that drives the blade (38) and staple pusher (33). Therefore, claims 16, 17 and 23 are not anticipated by Kuramoto et al.

Applicant amended claim 24 to recite a staple driver being driven by the first rotatable shaft, wherein the first rotatable shaft also drives the blade. Support for this amendment may be found on p. 20, lines 10-15. As stated above, Kuramoto et al. does not disclose a rotatable shaft that drives a blade and a staple driver. The blade (38) and staple pusher (33) in Kuramoto et al. are moved by hydraulic pressure, not a common rotatable shaft. Therefore claim 24 is not anticipated by Kuramoto et al.

Claims 25, 26 and 29 are dependent on claim 24 and incorporate all the features recited in claim 24. Therefore, claims 25, 26 and 29 are not anticipated by Kuramoto et al. for at least the same reasons that amended claim 24 is not

anticipated. Dependent claims 25 and 26 are distinguishable for additional reasons. Claim 25 was amended to recite outer threads on the second rotatable shaft for effecting the relative movement of the first and second jaws between the open position and the closed position. Moreover, claim 26 was amended to recite a first rotatable shaft adapted to drive the staple driver and the blade simultaneously. Support for these amendments may be found on p. 17 lines 5-6, p. 20 lines 10-15, and other sections of the application. Since the blade (38) and staple pusher (33) in Kuramoto et al. are moved by hydraulic pressure, not a common rotatable shaft, claims 25, 26 and 29 are not anticipated by Kuramoto et al.

The Examiner also rejected claims 15-17, 20 and 23 under 35 U.S.C. § 102(b) as being anticipated by Becht. As noted above, claim 15 has been amended to recite "a first rotatable shaft for effecting the relative movement of the first and second jaws between the open position and the closed position, and a second rotatable shaft for driving the blade and the staple driver." Becht does not disclose rotatable drive shafts that effect movement of components. Instead, Becht discloses a shank (22), a staple driver actuator (27) and a scalpel actuator (30) which are axially shiftable but not rotatable. (Col. 6, lines 4-10). In addition, Becht does not disclose a shaft that drives both a blade and a staple driver, as recited in amended claim 15. Becht essentially teaches a scalpel (13) and a staple driver (11) that are moved by separate drive wheels at different times. A latch (72) prevents the scalpel drive wheel from moving the scalpel until the staples are completely advanced by the staple drive wheel (Col.10, lines 60-66). As a result, amended claim 15 does not read on the structure or operational features disclosed in Becht.

Claims 16, 17, 20 and 23 are dependent on claim 15 and incorporate all the features of claim 15. Therefore, claims 16, 17, 20 and 23 are not anticipated by Becht for at least the same reasons that amended claim 15 is not anticipated. Claims 16 and 17 are also distinguishable for other reasons. Claim 16 has been amended to recite outer threads on the second rotatable shaft for driving the blade and the staple driver. Claim 17 has been amended to recite that the second rotatable shaft is adapted to drive the staple driver and the blade simultaneously. Becht does not disclose a rotatable shaft with outer threads for driving both a staple driver and a blade, as discussed earlier. The scalpel (11) and staples appear to be moved by

separate drive wheels that do not drive the scalpel and the staples simultaneously. Therefore, claims 16, 17 and 23 are not anticipated by Becht.

***Claim Rejections - 35 U.S.C. § 103***

The Examiner rejected claims 18-19 under 35 U.S.C. § 103 as being unpatentable over Kuramoto et al. or Becht in view of Hooven. As stated above in connection with claim 15, neither Kuramoto et al. nor Becht discloses a rotatable shaft for driving a blade and a staple driver. Therefore, claim 15 is allowable over Kuramoto et al. and Becht. Claims 18 and 19 are dependent on claim 15 and therefore incorporate all of the features in claim 15. As a result, claims 18 and 19 are allowable for at least the same reasons that claim 15 is allowable. Furthermore, claims 18 and 19 recite additional features that are not taught or suggested in the cited references. Claims 18 and 19 are directed to a device with a first rotatable shaft for effecting the relative movement of first and second jaws, and a second rotatable shaft for driving a blade and a staple driver, wherein the first and second shafts are driven by first and second motors, or a motor arrangement. Neither Kuramoto et al. nor Becht teach first and second rotatable drive shafts driven by first and second motors or a motor arrangement. Kuramoto et al. teaches a blade (38) and staple pusher (33) that are moved by a manual lever (8), as opposed to a motor-driven shaft. Becht teaches a scalpel (13) and a staple driver (11) that are moved by drive wheels, not a motor-driven shaft. The deficiencies in Kuramoto et al. and Becht are not overcome by combining Kuramoto et al. or Becht with Hooven. Hooven teaches a single motor-driven shaft that operates the jaws, the blade and the staple driver. A second motor-driven shaft is not taught or suggested in Hooven. Therefore, none of the three references teach or suggest the use of first and second rotatable drive shafts operated by motors or a motor arrangement. The use of one shaft in Hooven, instead of two shafts recited in claims 18-19 (first shaft to move the jaws, and a second shaft for driving the blade and staple driver) is not a trivial distinction. With only one shaft in the Hooven device, the jaws cannot be operated independently of the blade and staple driver. In addition, Hooven requires numerous additional parts to coordinate and control movement of the jaws, blade and staple driver from a single shaft. Since the single shaft in Hooven operates completely differently than the two shafts recited

in claims 18 and 19, claims 18 and 19 are not taught or suggested by combining Kuramoto et al. or Becht with Hooven.

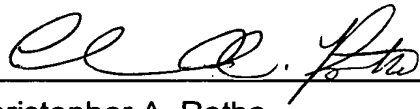
***Allowable Subject Matter***

The Examiner indicated that Claims 21 and 22 would be allowable if rewritten in independent form to include all of the features of the base claim and any intervening claims. The Examiner also indicated that claims 27 and 28 would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112 and include all of the features of the base claim and any intervening claims. The Applicant has amended claims 21, 22, 27 and 28 as suggested. Therefore, the Applicant believes that claims 21, 22, 27 and 28 are in allowable form.

In light of the foregoing amendments, the Applicant believes that the application is in a condition for allowance. The Examiner is encouraged to contact the Applicant's undersigned attorney if the Examiner believes that issues remain regarding the allowability of this application.

Respectfully submitted,

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